BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 310 1995

Bill H _____ S 246 Original bill & history ✓ C

H. Committee on Bus. & Labor		S. Committee on Bus. & Ind.	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
3/14	✓ C	2/3	✓ C
_____	___C	_____	___C
_____	___C	2/10	✓ C
Date Out 3/14	✓ C	out 2/13	✓

Did this bill originate in an interim committee? ___Yes ✓ No

Committee _____ Report _____

SENATE BILL NO. 246

INTRODUCED BY Welborn

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ISSUANCE OF AN ADMINISTRATIVE WARRANT DIRECTING A PAWNBROKER TO HOLD PROPERTY FOR 30 DAYS; PROVIDING FOR A CHALLENGE TO AN ADMINISTRATIVE WARRANT; AUTHORIZING RESTITUTION TO A PAWNBROKER; AND AMENDING SECTIONS 46-5-212 AND 46-18-241, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-5-212, MCA, is amended to read:

"**46-5-212. Pawnbroker to surrender stolen property -- warrant.** When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to or purchased by the pawnbroker or dealer is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days ~~unless demanded~~ upon issuance of an administrative warrant by a peace officer. ~~and, upon demand,~~ The pawnbroker or dealer shall surrender the property to the peace officer if the peace officer demands the property pursuant to the administrative warrant. The peace officer shall give the pawnbroker or dealer a receipt for any property surrendered by the pawnbroker or dealer. The pawnbroker or dealer may appeal the validity of the administrative warrant in justice's court."

Section 2. Section 46-18-241, MCA, is amended to read:

"**46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court may require an offender to make restitution to any victim of the offense, including a pawnbroker.

(2) The court may require the offender to pay the cost of supervising the payment of restitution as provided in 46-18-245 by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5 or more than $250. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245."

-END-

3/03	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/28	2ND READING CONCURRED	96	0
3/29	3RD READING CONCURRED	98	2
	RETURNED TO SENATE		
3/30	SIGNED BY PRESIDENT		
3/31	SIGNED BY SPEAKER		
4/03	TRANSMITTED TO GOVERNOR		
4/04	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 326		
	EFFECTIVE DATE: 10/01/95		

SB 245 INTRODUCED BY JENKINS

REVISE THE MAXIMUM ALLOWABLE WEIGHT ON AXLES EQUIPPED WITH SINGLE TIRES OR WITH WIDE-BASE TIRES

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/26	FISCAL NOTE REQUESTED		
1/27	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
2/09	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/16	2ND READING PASSED	50	0
2/17	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/06	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	83	9
3/14	3RD READING CONCURRED	88	11
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 236		
	EFFECTIVE DATE: 03/24/95		

SB 246 INTRODUCED BY WELDON

PROVIDE FOR ISSUANCE OF AN ADMINISTRATIVE WARRANT DIRECTING A PAWNBROKER TO HOLD PROPERTY FOR 30 DAYS

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO BUSINESS & INDUSTRY		
2/03	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	37	9
2/16	3RD READING PASSED	44	6
	TRANSMITTED TO HOUSE		
2/20	FISCAL NOTE REQUESTED		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/14	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		

3/24	2ND READING CONCURRED	92	6
3/25	3RD READING CONCURRED	91	5
	RETURNED TO SENATE		
3/28	SIGNED BY PRESIDENT		
3/28	SIGNED BY SPEAKER		
3/28	TRANSMITTED TO GOVERNOR		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 310		
	EFFECTIVE DATE: 10/01/95		

SB 247 INTRODUCED BY COLE, ET AL.

CLARIFY THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES RULES REGARDING EFFLUENT RESTRICTIONS FOR DISCHARGES TO SURFACE WATERS

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO NATURAL RESOURCES		
1/26	FISCAL NOTE REQUESTED		
1/30	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
2/01	HEARING		
2/20	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY		
	DIED IN COMMITTEE		

SB 248 INTRODUCED BY CRISMORE, ET AL.

REMOVE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FROM CESSPOOL, SEPTIC TANK, AND PRIVY CLEANER REGULATION

BY REQUEST OF THE DEPARTMENT OF HEALTH & ENVIRONMENTAL SCIENCES

1/26	INTRODUCED		
1/26	FIRST READING		
1/26	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/27	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/13	HEARING		
2/15	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY		
	DIED IN COMMITTEE		

SB 249 INTRODUCED BY BISHOP

ELIMINATE ELECTED POSITION OF CLERK OF SUPREME COURT AND TRANSFER CERTAIN FUNCTIONS TO THE SUPREME COURT ADMINISTRATOR

1/26	INTRODUCED		
1/26	FIRST READING		
1/26	REFERRED TO JUDICIARY		
1/27	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/10	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	2ND READING PASSED AS AMENDED	32	1
2/15	3RD READING PASSED	32	1
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ------- REREFERRED ---- DATE READ

SB0216	BECK, TOM			ESTABLISH CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN INSURANCE PRODUCERS				
	1/21	2/03		PASS AS AMENDED	2/08	VOTE: UNAN		2/08
SB0224	CHRISTIAENS, CHRIS			REVISE REAL ESTATE BROKER AGENCY LAW & REQUIRE DISCLOSURE OF AGENT OBLIGAT'S				
	1/23	2/01		PASS AS AMENDED	2/07	VOTE: 8-1		2/07
SB0228	VAN VALKENBURG, FRED			PROHIBIT PARTNER CANCELLING INSURANCE WITHOUT MAJORITY OF PARTNERS CONSENT				
	1/24	2/03		PASS AS AMENDED	2/08	VOTE: 8-1		2/08
SB0239	VAN VALKENBURG, FRED			REVISE BEER WHOLESALER INTERBRAND COMPETITION LAW -- SMALLER BRANDS				
	1/25	2/08	2/08, 2/14,	DO PASS	2/16	VOTE: 5-4		2/16
SB0242	GAGE, DELWYN			REVISE THE MEMBERSHIP OF THE BOARD OF HORSERACING				
	1/25	2/02		PASS AS AMENDED	2/07	VOTE: 8-1		2/08
SB0243	WILSON, WILLIAM			UPDATE SKIER RESPONSIBIITY CODE TO BE POSTED BY SKI AREA OPERATORS				
	1/25	2/09		PASS AS AMENDED	2/09	VOTE: UNAN		2/09
SB0246	WELDON, JEFF			ADMINISTRATIVE WARRANT TO SEIZE PAWNED PROPERTY				
	1/25	2/03	2/06, 2/10,	PASS AS AMENDED	2/13	VOTE: 7-1		2/14
SB0253	HOLDEN, RIC			CREATE INSURANCE FRAUD PREVENTION ACT TO BE ENFORCED BY STATE AUDITOR				
	1/26	2/09		PASS AS AMENDED	2/13	VOTE: 6-2		2/14
SB0260	PIPINICH, BOB			GAMING INDEMNITY TRUST FUND				
	1/27	2/10		PASS AS AMENDED	2/10	VOTE: 5-3	TAXATION	2/10
SB0261	SPRAGUE, MIKE			PROHIBITS PUBLIC FROM DISPENSING FLAMMABLE LIQUID/MOTOR FUEL SOLD AT RETAIL				
	1/27	2/09		TABLED ON	02/09	VOTE: 6-3		
SB0284	VAN VALKENBURG, FRED			REQUIRE MARKET COMPARISON FOR PRICING UTILITY COAL				
	2/01	2/07		DO PASS	2/08	VOTE: UNAN		2/08
SB0287	HERTEL, JOHN			AUTHORIZE LABOR TO ADOPT RULE ALLOWING WAIVER OF SAFETY COMMITTEE				
	2/01	2/13		PASS AS AMENDED	2/13	VOTE: UNAN		2/14

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 3, 1995, at 8:00 a.m.

ROLL CALL

Members Present:
Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Lynette Lavin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 246, SB 216, SB 228
Executive Action:	SB 22 DO PASS AS AMENDED
	SB 170 DO PASS

HEARING ON SB 246

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, Missoula, explained he would like the committee to consider a possible change to the search and seizure chapter of the criminal procedures title. Specifically, he was attempting to enhance the due process protection of business people who were in the business of pawn brokerages. Under current law a business person who operated a pawnbroker business did not have the due process protection that one would normally assume a business person would have. They talked about a pawnbroker, who, in good faith, bought a piece of property that had been stolen. Until two years ago the pawnbroker and his

property interests were protected through a search warrant, but the 1993 Legislature removed the search warrant requirement. Section 1, in lieu of a search warrant, he proposed that peace officers be asked to administer an administrative warrant. Current law required the pawnbroker to hold the property for 30 days upon issuance of an administrative warrant, and if the peace officer then demanded that the pawnbroker give up the property to him, that must be done in conformance with the administrative warrant. As a due process protection, he asked that the committee amend loss, so the pawnbroker may appeal validity of the warrant to justice court. In Section 2 he asked if the property was stolen and the rightful owner came forward, the property be given to the original owner, and part of the restitution by the criminal to the victims be considered to compensate the pawnbroker's investment.

SEN. WELDON said the bill was intended to protect certain types of property interests. The pawnbroker could not acquire title to the piece of stolen property because the thief did not have legitimate title to the property. The pawnbroker's interest in the stolen property item was a possessory interest, which was a right to possess property by virtue of an interest created in the property. The interest in the property for the pawnbroker was created when, in good faith, he took it as a loan or bought it. The pawnbroker gave money to the thief, therefore the pawnbroker now had a possessory interest. It was that interest which he was attempting to protect. There should be some restitution to the pawnbroker so he could recoup his investment.

One of the tools **SEN. WELDON** was attempting to use was the administrative warrant. An administrative warrant was a document or instrument issued by an administrative agency; or, in that case, issued by the police chief or county sheriff. It was similar to a search warrant insofar it was an official document which indicated authority to the police officer to take that piece of property. It was not as forceful as a search warrant because it was not issued by a judicial branch. Several people asked what an administrative warrant was because they had never seen one. The reason was the state laws did not provide for one. He asked the committee to create an instrument for that. Other states issued administrative warrants; there was case law in other states. He believed the chief law enforcement officer of the state, the Attorney General, had to deliver an opinion, and offer some guidance to the local police officers and sheriffs in using an administrative warrant. There was also precedent in other federal agencies on how administrative warrants were drafted and administered.

Proponents' Testimony:

Linda Helding, Montana Pawnbrokers, commented prior to her entrance into the pawnbroker industry, she didn't know that some of their rights would be taken away. She attempted to get restitution for a piece of jewelry that was taken out of her pawn

shop by a local police detective who then handed the item to the owners. That was the last she heard from the owners, the detective and her $400. That may not seem like a lot of money and, perhaps, it wasn't, if it only happened once. But, she said they dealt with situations like that on a regular basis. She spoke to the Missoula County Sheriff's Department which was not opposed to the bill if the administrative warrant was user-friendly. In other words, the police department would accept it if they could walk into a store, fill out the date, place, what the item was, and sign it.

Ms. Helding said the idea that a thief would have someone supervise the payment of restitution was an idea she received from a Missoula police detective. When she spoke to law enforcement in Missoula, they agreed that arguing with law enforcement over the fact that a thief could walk into a pawnshop and sell an item to her, went back to the idea of what was a pawnshop. A pawnshop was a high risk loan establishment. Some law enforcers thought the risk involved only stolen items, but it also meant that they didn't do a credit check before they loaned money, as did a bank. All they asked was that they claimed to own an item and signed a document. They sent a copy of the document to law enforcement to check against their sheets. They had no way of checking on their legal possession of the property. The reason their rights were taken away two years ago was actually to make it easier for law enforcement agencies. What they wanted to do was stop the arguing between pawnbrokers and law enforcement; they wanted the thief to pay restitution.

Lee Ash, Co-owner of Cargo Liquidators and Pawn in Billings, read his written testimony, **EXHIBIT #1.**

Todd Coutts, Montana Pawnbrokers, told the committee those who represented the Pawnbrokers of Montana actually represented a new wave in the pawnbroker industry, with an interest in cooperating and enhancing their relationship with law enforcement. The law passed in 1993 eliminated the need for a search warrant and caused a lot of strife and disagreement between law enforcement people and pawnbrokers. It grew worse. They wanted it to get better. They were not in business because they wished to keep stolen items or because they didn't care about victims. They wanted people to get their property back. But, they believed they deserved the same due process and rights of other people. Another thing was the criminals' responsibility. Thieves needed to pay restitution to them for their unlawful actions. There probably were some 'shady' pawnbrokers but the majority of them were interested in running a good, clean operation.

<u>Opponents' Testimony</u>:

Bill Fleiner, Montana Sheriffs & Peace Officers Association, said the current law, in effect then, formalized the city ordinances which were not written into state law. When that happened, the discussion and purpose for the search warrant clause was on a

supposition that an unethical peace officer entered and went through a shop. However, there was never any history that such a situation took place. In 1993, the search warrant was eliminated. As far back as 1989, it was already a standard process for agencies to receipt property so the pawnbroker had a record of the property. It was placed into evidence and the investigation continued. Ultimately, the court had the responsibility of releasing the property. A peace officer went to the court for an order which released or disposed of the property. From an evidentiary standpoint, there was no precedent set for the authority of a peace officer to issue an administrative warrant.

Mr. Fleiner contended they talked with the Attorney General about that issue. They believed there were probably other statutes of law which needed to be considered before they looked at the statute as a vehicle to begin issuing administrative warrants. They attempted issuing administrative warrants with runaway children who were in other homes and the courts warned them that it was their judicial authority to issue warrants. He did not think law enforcement should issue administrative warrants. The bill added to the paperwork and paper trail. It added to the Supreme Court's plain view doctrine.

Mr. Fleiner stated the pawnbrokers had no problem being considered victims if it facilitated return on the money they lent against the stolen property. They maintained a very good working relationship with most of the pawnbrokers and law enforcement in the state. One of the reasons the warrant was eliminated was its lack of use. There were only a couple of pawnbrokers in the state who refused a law enforcement officer without a warrant. It was their contention that as the statute presently read, it was workable.

Mr. Fleiner said in Missoula, where the law enforcement officer turned the stolen property over to the original owner, the officer was out of line and probably had not followed the department's procedure. The evidence should be receipted to the pawnbroker and taken to the evidence locker. An investigation should follow that. The pawnbroker, with the receipt, had the ability to make his claim when restitution was made. Should there be mischief, they had the option to pursue it further with the County Attorney's office or the police or sheriff's department. It was their position that what was presented in the law, was working.

Stan Kalezyc, General Legal Counsel for the Montana Municipal Insurance Authority, which was the group self-insurance program for cities and towns in the State of Montana. **Mr. Kalezyc** attested that under the auspices of the NMIA program his organization defended a lawsuit brought against the city of Billings and the city of Laurel, which challenged the constitutionality of the law passed in the 1993 session. He

declared he was familiar with the issues and concerns underlying the proponents testimony and Senator Weldon's bill.

Mr. Kalezyc stated the Montana Municipal Insurance Authority's opposition to this bill rested in the details. He spoke with the City Attorneys from Missoula and Billings when the bill first came out and asked them about the administrative warrant. Their response was, in effect, that there was no such creature within city government. The bill provided no procedures for issuance of the warrant, there were no standards under which the warrants were to be issued. If the concept was that a police officer or deputy sheriff could fill out a piece of paper effectively as a receipt with a pawnbroker, he said then the proponents had not gained much over what the current law provided.

Mr. Kalezyc voiced their second concern was whether or not the pawnbroker who received the administrative warrant would take the warrant to court? The bill placed no time limit within which the pawnbroker had to go to court. Theoretically, it could be six months to a year later before they attacked the administrative warrant. He disbelieved that was in the best interest of the pawnbroker or the City Police Department or County Sheriff Department. He declared if the committee was inclined to do anything with the bill, they had to spell out what an administrative warrant was and they had to put some time limits on the challenge of the warrant.

Mr. Kalezyc continued, their third concern was that the bill required a person to go to the County Justice Court to appeal these warrants. In the case where a sheriff's department issued a warrant, the jurisdiction made sense. If, however, it was a city matter, the appropriate venue ought to be the City Court. Eventually, they received an answer from a Federal Court because the suit which challenged the current Montana statutes was filed in Federal Court. He suggested the legislature wait until it knew if they had a constitutional defect with the statute passed in 1993, before they passed further legislation.

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked **SEN. WELDON** why the bill did not contain a definition of an administrative warrant. **SEN. WELDON** replied he had asked **Greg Petesch, Director of Legal Services, Legal Council,** the same question and **Mr. Petesch** was confident that case law from other states provided a sufficient definition. He was not adverse to putting in the definition. He believed the Attorney General could provide guidance to cities and counties on how the administrative warrant was administered. **SEN. BENEDICT** asked who issued the warrant. **SEN. WELDON** replied the bill indicated it was a peace officer. His intent would be the chief officer of the jurisdiction. **SEN. BENEDICT** asked in Section 2, it seemed to him they added pawnbroker when they could

have added a whole laundry list of people. It would be easier, since they already had "any victim of the offense", which included a pawnbroker. Perhaps they could use language such as "any person suffering economic loss as a result of a crime". There were many instances where someone suffered economic loss. Maybe they could have been more generic on the term. **SEN. WELDON** stated that would be fine. His aim had been to ensure the bill defined 'victims' as including pawnbrokers.

SEN. MIKE SPRAGUE stated he wanted the Committee to know that he had a conflict. He had an interest in three pawn shops for over twelve years. He said he was a bit biased but he could shed some light for the Committee. Prior to 1993, Billings was using something akin to an administrative warrant. It was a city ordinance. Law enforcement brought a form to a pawnshop under suspicions of having a piece of stolen property. The officer left the form and took the suspected property or asked the pawnbroker to hold the property until after the investigation. It worked very well. However, it became an administrative nightmare as to who was responsible for what.

SEN. SPRAGUE viewed the administrative warrant as a way to avoid bringing a judge into the process. However, all other citizens had to face the judge. Now the law changed to exclude pawnbrokers. That was one reason a lawsuit was filed; it was a Fourth Amendment right. He asked why segments of society were selected for amendments that did not apply to them. He believed this issue had been made to sound somewhat more simplistic than it actually was. He asked if that made Mr. Fleiner's job easier. **Mr. Fleiner** replied it was easier already using the receipt. The administrative warrant wouldn't be more than that. The rules of evidence told us to hold the property, particularly if there was a charge filed. The property was receipted, a report made, and the report was referred to the County Attorney or City Court, depending on the gravity of the charge. That was currently the method they had. The property was retrieved without difficulty unless there was a prosecution. When the bill was originally heard, the search warrant was placed in it on the chance of an unethical peace officer. Our concerns were about the loss of the evidence which, in some cases, could be significant in major crimes. He said in Billings and Missoula there were problems with pawnbrokers and peace officers withholding the evidence even when a search warrant was in effect.

SEN. SPRAGUE declared a line of least resistance really did exist. The example that was given was real. Remember that a pawnbroker didn't want to sell the merchandise; he would rather have it returned to the owner. **CHAIRMAN HERTEL** stated that many of the committee members objected to that line of questioning and thought he should have been a proponent. He reminded **SEN. SPRAGUE** to get to the question quickly. **SEN. SPRAGUE** spoke of a peace officer who came into the shop and asked him if a particular brown saddle was in his possession. He replied he had several. The officer stated that someone from his area saw the

brown saddle in his store. **SEN. SPRAGUE** told the peace officer to bring the person in to identify it. He identified it although it had no distinctive marks and the only description he gave was "brown saddle". That particular peace officer ran for sheriff that year and said to me ..."this guy is a supporter of mine and I have to help him out, can I please take this saddle"... **SEN. SPRAGUE** pointed out to the officer that he would not be restricted from taking it because he was a peace officer. Under the law at that time, the peace officer was not required to prove anything. They took the saddle and left and he was out $300. The recourse warrant was important in that situation. **Mr. Fleiner** stated he believed those mechanisms were already in place through Justice Court, District Court and through the County Attorney. He could have filed a theft report against that peace officer. The purpose of the receipt gave the pawnbroker recourse if the evidence was not disposed of properly.

SEN. KLAMPE asked **Stan Kalezyc** if he thought there was a more appropriate section of law for dealing with the administrative warrant. **Mr. Kalezyc** replied that he didn't know of any section of law that provided for an administrative warrant. The colloquia between **SEN. SPRAGUE** and **Mr. Fleiner** demonstrated that whether it was in this section of the code or some other section of the code, they needed to know if there was to be an administrative warrant, what purposes did it serve, how and where obtained, what were the procedures, what were the standards, and what were its limitations. The administrative warrant was a new item. He did not know where it would be put.

SEN. MILLER asked **Linda Helding** for her opinion on the administrative warrant. **Ms. Helding** replied that the border patrol used administrative warrants, as did EPA. She hesitated to give EPA examples because of the excessive paper work due to the involvement of toxic waste. The EPA warrant had location, date, place, description of item. She liked the administrative warrant because it gave the pawnbroker access to the courts, which they did not have with the receipt. The receipt was just a receipt. She may find out two years later what happened to that item. With an administrative warrant, she was immediately enabled to go to court. She liked the idea of anyone with an economic interest in the stolen property being included. An administrative warrant was known to the legal people. It was something that needed to be designed for Montana law.

SEN. EMERSON asked **Ms. Helding** if she tried to go to court over the jewelry. She replied there was no serial number on the jewelry, nobody showed her a receipt indicating they bought it; no photograph identifying the woman wearing it. She walked into her pawnshop and said that was her necklace. She claimed it was bought in India by her husband for her anniversary gift 10 years prior. That was the first break the law enforcement had on a $25,000 jewelry burglary in Missoula. That was the only clue they had. They found the three men and sent them back to prison but she received no money or any other restitution for her

efforts. She reminded them she didn't have to be that honest. She could fence stolen jewelry. She didn't have to call them or turn in the papers. There was no precedent in the Montana law for her to be treated fairly in the courts. Her Fourth Amendment, taken away from her, indicated no one cared if she operated honestly or not. It assumed that she was guilty before she went to court. **SEN. EMERSON** asked again if she ever went to court to try to recover restitution for the jewelry. She stated a lawyer would cost more than $400. With an administrative warrant, she had the chance to represent herself in court. It would be interesting to know how border patrol made use of that because they seemed to be the only law enforcement in the state that currently used it.

SEN. KLAMPE questioned **Mr. Fleiner** if there was access to the court as of now and would Ms. Helding need a lawyer? **Mr. Fleiner** replied the County Attorney was the lawyer for that. Those matters could be taken to the County Attorney because the person was a victim. **SEN. KLAMPE** asked what advantage the administrative warrant gave the pawnbroker over the current system. **Mr. Fleiner** stated he didn't believe it would be any different than the receipt process now.

Closing by Sponsor:

SEN. WELDON closed by offering a different perspective on some of the things said. First of all, the statement was made that the rules of evidence required a stolen piece of property be held through the court proceedings. That was not necessarily true. The same rules of evidence would allow a photograph of that piece of evidence in lieu of the property. The receipt did not perform the function that an administrative warrant would do, however. Both the state and U.S. Constitution provided for life, liberty, and property to be protected by due process of the law when needed. Current law afforded due process in that the pawnbroker should be informed. He believed a key component to due process protection was that the person whose property was to be taken was to be heard.

SEN. WELDON contended an administrative warrant allowed that person to be heard because they could appeal the administrative warrant in a court. That was not provided by current law. Primarily, what they asked them to do was to balance; the interest of the person whose property was stolen, the interest of the law enforcement officers, and the interest of other victims -- in that case, the pawnbroker. He asked the committee to balance the equation so the pawnbrokers' interest was more protected. He would be willing to work with the legal council on the amendments suggested. He knew there were ways that they could strengthen the bill. He asked the Attorney General's office how they could make that document more user-friendly to the local law enforcement.

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL DATE 2-3-95

NAME	PRESENT	ABSENT	EXCUSED
STEVE BENEDICT, VICE CHAIRMAN	✓		
WILLIAM CRISMORE	✓		
CASEY EMERSON	✓		
GARY FORRESTER	✓		
TERRY KLAMPE	✓		
KEN MILLER	✓		
MIKE SPRAGUE	✓		
BILL WILSON	✓		
JOHN HERTEL, CHAIRMAN	✓		
Bart	✓		
Lynette	✓		

SEN:1995
wp.rollcall.man
CS-09

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2-3-95
BILL NO SB 246

Senate Bill #246

Proponent View

Mr. Chairman, Distinguished Senators;

My name is Lee Ash, my father, Paul Ash and I own Cargo Liquidators & Pawn in Billings. We are one of the 90 or so pawnshops in the state.

I would like to give you some statistics you may not be aware of;

There are at last count approximately ninety (90) pawnshops in Mont. with around 18 million invested in these businesses. This works out to 400+ employees, 7.3 million in salaries, 1.3 million in property taxes, 437.400 in state income taxes. The money these businesses loan out, at an average of $50 a loan, provides 5.4 million in consumer spending. We serve 180,000 Montanas that don't have the ability to borrow money at other financial institutions.

Because of our close cooperation with local law enforcement agencies, only 1\2 of 1% of all the merchandise we take on pawn is stolen. But even this small amount can add up to 1,000 of dollars in loses we suffer as an industry.

Of the 1/2 of 1% of stolen merchandise 3 out of 5 times it is stolen or borrowed by a family member. Let me give you a short scenario;

Johnny is my son, he finally gets a date with his dream girl but has no money. So he takes my rifle to your pawnshop and borrows $75 for his date. I go to my gun cabinet to get my rifle to go hunting and, behold; no rifle. Naturally, I assume it has been stolen, I call the police and make out a theft report. Later I'm explaining to the family what has happened to my rifle, and low and behold Johnny fesses up to the crime. I call the police and tell them Johnny's story, so they, in turn, come into your pawnshop and

pickup the rifle, leaving you with a receipt ~~to~~ that is only good for you to use on your taxes, and then returns the rifle to me. After scolding Johnny I decide he has learned his lesson and drop the theft charges. After all, I got my rifle back and it didn't cost me a thing. The only one who loses in this deal is the pawnbroker.

In our pawnshop last year, in instances like the above scenario, and in other thefts, we lost 1,255.50 of unrecoverable monies. We are only one of approximately (90) ninety pawnshops in the state. Because of the way the statutes are now written, we have no way to recoup our loss.

Now I certainly don't know anything about writing laws, but I would like this Senate Bill, #246, to protect me as a pawnbroker from having to return merchandise to a victim unless we can be reimbursed the amount of the original pawn, either through the court system or, in the case of a family problem, by the person who originally pawned the item. I hope this Bill gives me those rights as it is written or can be amended so that we, as pawnbrokers, are not the only persons to suffer as a result of a family problem, or a theft.

Thank You,

Lee R. Ash
Cargo Liquidators & Pawn
Blgs. Mont.

DATE February 3, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: SB216 Senator Beck

SB 228 Senator VanValkenburg SB 246 Sen. Weldon

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Roger McGlenn	Independent Ins. Agents Assoc of MT	216	X	
Steve Turkiewicz	Mt. Auto Dealers Assn	216	X	
Lee Ash	Mt. Pawnbrokers.	246	X	
Todd Coutts	MT Pawnbrokers	246	X	
Alex Coutts	MT Pawnbrokers	246	X	
LINDA HERDRICK	MT PAWNBROKERS	246	X	
JOHN CADBY	MT BANKERS ASSN	216	X	
LARRY AKEY	MT ASSOC OF LIFE UNDERWRITERS	216	X	[redacted]
LARRY AKEY	"	228		X
Jacqueline Lenmark	Am. Ins. Assoc.	228		X
[illegible] FEINER	MT Sheriffs & Police Officers Assoc	246		X
STAN KALECZYC	MT MUNICIPAL INSURANCE AUTHORITY	246		X
[illegible] Bonney	Prof. Ins. Agts. of MT (PIA)	216 [redacted]	X	
DEBBIE Bonney	PIA "	228		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

John Alke, Montana Dakota Utilities (MDU), expressed support for SB 302.

Opponents' Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

SEN. JABS said **SB 302** would allow utilities to supply electric service without the unnecessary expense of duplicating services. He reminded the committee **SB 302** would allow electric co-ops to serve annexed areas upon agreement. **SEN. JABS** thanked the committee for a good hearing.

EXECUTIVE ACTION ON SENATE BILL 302

Motion/Vote: **SEN. GARY FORRESTER MOVED SB 302 DO PASS.** Motion **CARRIED UNANIMOUSLY** by voice vote.

EXECUTIVE ACTION ON SENATE BILL 246

Motion: **SEN. MIKE SPRAGUE MOVED TO ADOPT AMENDMENTS SB024601.ACE, EXHIBIT #7.**

Discussion: **Greg Petesch** explained the amendments. **SEN. SPRAGUE** asked what would happen, if in the 30-day period, no one would be heard from. **Mr. Petesch** said if nobody was heard from, the property would be dealt with by the pawnbroker through the usual course of trade.

Vote: Motion **TO ADOPT AMENDMENTS SB024601.ACE CARRIED UNANIMOUSLY** by voice vote.

Motion: **SEN. BILL WILSON MOVED SB 246 AS AMENDED DO PASS.**

Discussion: **SEN. SPRAGUE** requested and was granted permission to abstain from voting.

SEN. FORRESTER said **SB 246** was a bill he could not support and reminded the committee the law enforcement people told the committee to leave it alone.

Substitute Motion/Vote: **SEN. GARY FORRESTER MOVED A SUBSTITUTE MOTION TO TABLE SB 246.** The substitute motion **FAILED 5-4** on roll call vote (#1).

No further executive action was taken at this time on **SB 246.**

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL DATE 2/10/95

NAME	PRESENT	ABSENT	EXCUSED
STEVE BENEDICT, VICE CHAIRMAN	X		
WILLIAM CRISMORE	X		
CASEY EMERSON	X		
GARY FORRESTER	X		
TERRY KLAMPE	X		
KEN MILLER	X		
MIKE SPRAGUE	X		
BILL WILSON	X		
JOHN HERTEL, CHAIRMAN	X		

SEN:1995
wp.rollcall.man
CS-09

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL VOTE

DATE 2/10 BILL NO. SB 246 NUMBER 1

MOTION: Senator Forrester moved to Table SB 246

NAME	AYE	NO
STEVE BENEDICT, VICE CHAIRMAN		X
WILLIAM CRISMORE	X	
CASEY EMERSON	X	
GARY FORRESTER	X	
TERRY KLAMPE	X	
KEN MILLER		X
MIKE SPRAGUE		X
BILL WILSON		X
JOHN HERTEL, CHAIRMAN		X

SEN:1995
wp:rlclvote.man
CS-11

NATE BUSINESS & INDUSTRY
XHIBIT NO. 7
ATE 2/10/95
BILL NO. SB 246
(Presented by Sen. Sprag

Amendments to Senate Bill No. 246
First Reading Copy

Requested by Senator Weldon
For the Senate Committee on Business and Industry

Prepared by Connie Erickson
February 9, 1995

1. Title, line 6.
Strike: "PAWNBROKER"
Insert: "PERSON SUFFERING ECONOMIC LOSS AS A RESULT OF THE CRIME"

2. Page 1, line 12.
Following: "warrant."
Strike: "(1)"

3. Page 1, line 16.
Following: "~~demand,~~"
Strike: "The"
Insert: "Following expiration of the 30-day period, the"

4. Page 1, line 17.
Following: "officer"
Insert: "upon demand"

5. Page 1, lines 17 and 18.
Strike: "if" on line 17 through "warrant" on line 18

6. Page 1, line 19.
Strike: "The"
Insert: "During the 30-day period, the"

7. Page 1, line 20.
Following: "court"
Insert: "or municipal court"

8. Page 1.
Following: line 20
Insert: "(2) As used in this section, "administrative warrant" means a warrant:
(a) issued by the chief law enforcement officer of the jurisdiction;
(b) that describes the property to be held; and
(c) that states that the pawnbroker shall hold the property

for 30 days from the date of receipt."

9. Page 1, line 24.
Strike: "pawnbroker"
Insert: "a person suffering an economic loss as a result of the crime"

business must have an effective written safety plan and either a satisfactory mod factor or low incident record.

Vote: The motion **TO ADOPT AMENDMENTS SBO2871.AEM CARRIED** by **UNANIMOUS** voice vote.

Motion: **SEN. KEN MILLER MOVED SB 287 AS AMENDED DO PASS.**

Discussion: **SEN. EMERSON** commented when SB 287 was put into practice, there was an overlap with OSHA. He also commented safety in the workplace was dependent upon individual judgment; the basic idea in a safety program was to encourage employees to think safety.

Vote: The motion **SB 287 DO PASS AS AMENDED CARRIED UNANIMOUSLY** by voice vote.

EXECUTIVE ACTION ON SENATE BILL 317

Motion: **SEN. WILLIAM CRISMORE MOVED SB 317 DO PASS.**

Discussion: **SEN. EMERSON** commented he saw no reason to either pass or not pass SB 317. He said it was his interpretation it defined the paperwork for state bureaucracy.

SEN CRISMORE commented if accountants were to be involved as financial advisors, they should be listed and shown as having that responsibility.

Vote: Motion **TO PASS SB 317 PASSED** 7-1 on a voice vote, with **SEN. EMERSON** voting "NO".

EXECUTIVE ACTION ON SENATE BILL 246

Discussion Continued: Discussion on SB 246 was continued from February 10, 1995, when the motion **TO TABLE SB 246** failed 5-4 on voice vote.

Bart Campbell explained the amendments which had been distributed previously.

SEN. KLAMPE wondered if "city court" as well as "county court" had been included in the amendments. **Mr. Campbell** said it was #7. **SEN. KLAMPE** referred to Page 1, Line 24, eliminate "pawnbrokers" because it was redundant. **Mr. Campbell** said it was #9.

SEN. FORRESTER asked if an administrative warrant was issued, could a pawnbroker sue if he contested the validity of an effect claim. **Mr. Campbell** said if a pawnbroker did not like the

procedure, he or she could challenge the legality of the whole process the first time the warrant was served.

SEN. SPRAGUE said he had stated he would not vote; however, he checked with leadership and the law basically read if a person would personally benefit from the action, the legislator must abstain from voting. **SEN. SPRAGUE** further explained if a person belonged to an organization which mutually advantaged one way or the other, the voter should not abstain. Therefore, he opined he should not abstain.

Motion/Vote: **SEN. KEN MILLER MOVED TO ADOPT THE AMENDMENTS ON SB 246.** The motion **PASSED UNANIMOUSLY** by voice vote.

Motion/Vote: **SEN. TERRY KLAMPE MOVED DO PASS SB 246 AS AMENDED.** The motion **PASSED 7-1** on roll call vote **(#1)**.

EXECUTIVE ACTION ON SENATE BILL 253

Bart Campbell distributed three sets of amendments (sb025301.agp, sb025302.agp, sb025303.agp) and explained they all worked together.

Motion/Vote: **SEN. WILLIAM CRISMORE MOVED TO ADOPT AMENDMENTS sb025301.agp, EXHIBIT #12.** The motion **CARRIED UNANIMOUSLY** by voice vote.

Motion/Vote: **SEN. MIKE SPRAGUE MOVED TO ADOPT AMENDMENTS sb025302.agp and sb025303.agp, EXHIBITS #13 & #14.** The motion **CARRIED UNANIMOUSLY** by voice vote

Motion: **SEN. WILLIAM CRISMORE MOVED DO PASS SB 253 AS AMENDED.**

Discussion: **SEN. KLAMPE** said SB 253 would be a nice perk for an insurance company, but would not reduce premiums. He opined insurance companies should participate in savings they garnered if **SB 253** passed.

Vote: Motion **DO PASS SB 253 AS AMENDED CARRIED 6-2** by voice vote, with **SEN. KLAMPE** and **SEN. WILSON** voting "NO".

EXECUTIVE ACTION ON SENATE BILL 298

Motion: **SEN. GARY FORRESTER MOVED TO ADOPT AMENDMENTS sb029801.agp, EXHIBIT #15.**

Discussion: **Bart Campbell** explained the amendments increased the amount from $15 to $30.

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL DATE 2-13-95

NAME	PRESENT	ABSENT	EXCUSED
STEVE BENEDICT, VICE CHAIRMAN			✓
WILLIAM CRISMORE	✓		
CASEY EMERSON	✓		
GARY FORRESTER	✓		
TERRY KLAMPE	✓		
KEN MILLER	✓		
MIKE SPRAGUE	✓ late		
BILL WILSON	✓ late		~~✓~~ for trouble
JOHN HERTEL, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

February 13, 1995

MR. PRESIDENT:
We, your committee on Business and Industry having had under consideration SB 246 (first reading copy -- white), respectfully report that SB 246 be amended as follows and as so amended do pass.

Signed: John Hertel
Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 6.
Strike: "PAWNBROKER"
Insert: "PERSON SUFFERING ECONOMIC LOSS AS A RESULT OF THE CRIME"

2. Page 1, line 12.
Following: "warrant."
Insert: "(1)"

3. Page 1, line 16.
Following: "~~demand,~~"
Strike: "The"
Insert: "Following expiration of the 30-day period, the"

4. Page 1, line 17.
Following: "officer"
Insert: "upon demand"

5. Page 1, lines 17 and 18.
Strike: "if" on line 17 through "warrant" on line 18

6. Page 1, line 19.
Strike: "The"
Insert: "During the 30-day period, the"

7. Page 1, line 20.
Following: "court"
Insert: "or municipal court"

8. Page 1.

Amd. Coord.
Sec. of Senate

Following: line 20
Insert: "(2) As used in this section, "administrative warrant" means a warrant:
(a) issued by the chief law enforcement officer of the jurisdiction;
(b) that describes the property to be held; and
(c) that states that the pawnbroker shall hold the property for 30 days from the date of receipt."

9. Page 1, line 24.
Strike: "pawnbroker"
Insert: "a person suffering an economic loss as a result of the crime"

-END-

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL VOTE

DATE 2-13-95 BILL NO. SB 246 NUMBER 1

MOTION:

SB 246 DPAA

NAME	AYE	NO
STEVE BENEDICT, VICE CHAIRMAN		
WILLIAM CRISMORE	✓	
CASEY EMERSON	✓	
GARY FORRESTER		✓
TERRY KLAMPE	✓	
KEN MILLER	✓	
MIKE SPRAGUE	✓	
BILL WILSON	✓	
JOHN HERTEL, CHAIRMAN	✓	

SEN:1995
wp:rlclvote.man
CS-11

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE -----
-- REREFERRED ---- DATE READ

SB0228							
	2/15	3/03		TABLED ON 3/03	VOTE:12-6		
SB0233	HARP, JOHN		RETURN ATTORNEY FEES TO INSURER IF CLAIMANT GOT WORK COMP BENEFITS ILLEGALLY				
	2/20	3/08		CONCUR 3/8	VOTE: 18-0		3/08
SB0238	VAN VALKENBURG, FRED		EXEMPT CERTAIN UNIVERSITY TEMPORARY EMPLOYEES FROM MANDATED STATE BENEFITS				
	2/15	3/03		CONCUR 3/3	VOTE: 18-0		3/03
SB0239	VAN VALKENBURG, FRED		REVISE BEER WHOLESALER INTERBRAND COMPETITION LAW -- SMALLER BRANDS				
	2/20	3/01		CONCUR AS AMENDED 3/1	VOTE: 18-0		3/02
SB0242	GAGE, DELWYN		REVISE THE MEMBERSHIP OF THE BOARD OF HORSERACING				
	2/15	3/03		CONCUR AS AMENDED 3/7	VOTE: 16-2		3/07
SB0243	WILSON, WILLIAM		UPDATE SKIER RESPONSIBIITY CODE TO BE POSTED BY SKI AREA OPERATORS				
	2/15	3/02		CONCUR 3/2	VOTE: 18-0		3/04
SB0246	WELDON, JEFF		ADMINISTRATIVE WARRANT TO SEIZE PAWNED PROPERTY				
	2/20	3/14		CONCUR 3-14	VOTE: 18-0		3/16
SB0253	HOLDEN, RIC		CREATE INSURANCE FRAUD PREVENTION ACT TO BE ENFORCED BY STATE AUDITOR				
	2/20	3/09		CONCUR 3/9	VOTE: 17-1		3/09
SB0258	BARTLETT, SUE		ALLOW COUNTY TO RETAIN TAX DEED PROP IF IN BEST INTEREST OF COUNTY/PUBLIC				
	2/20	3/10		CONCUR AS AMENDED 3/10	VOTE: 18-0		3/10
SB0264	GAGE, DELWYN		ESTABLISH THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT				
	2/20	3/09		CONCUR AS AMENDED 3/14	VOTE: 18-0		3/16
SB0275	DEVLIN, GERRY		GRADUATED PLANT NURSERY LICENSURE SCALE BASED ON ANNUAL GROSS SALES				
	2/15	3/02		CONCUR 3/2	VOTE: 18-0		3/04
SB0277	NELSON, LINDA		REVISE FARM MUTUAL INSURANCE LAW				
	2/20	3/10		CONCUR AS AMENDED 3/10	VOTE: 18-0		3/10

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 14, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 246, SB 311, SB 350, SB 298,
Executive Action: SB 246, SB 298, SB 335, SB 224, SB 264

HEARING ON SB 246

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, Lake County, said this bill is an act providing for the issuance of an administrative warrant directing the pawnbroker to hold property for 30 days; providing for a

challenge to an administrative warrant and authorizing restitution to a person suffering economic loss as a result of the crime.

Proponents' Testimony:

Lee Ash, Cargo Liquidators of Billings, said at last count there were 90 pawn shops in Montana with $18 million invested in these businesses. There are 400 plus employees, $7.3 million in salaries, $1.3 million in property taxes, $437,400 in state income tax. The money these businesses loan out is an average of $50 a loan which provides $5.4 million in consumer spending. They serve about 180,000 people that don't have the opportunity to borrow money at any other financial institution. Because of the close cooperation with law enforcement officials, only one-half of 1% of all the merchandise they take on pawn is stolen. Even this small amount can add up to thousands of dollars in losses they suffer in their industry. Of the stolen merchandise, three out of five times it is stolen or borrowed by a family member. His pawn shop lost $1,255.50 in un-recoverable money. Because of the way the statutes are now written, they have no way to recoup their losses. This bill would protect the pawn broker from having to return merchandise to a victim unless they can be reimbursed in the amount of the original pawn either through the court system or by the person who originally pawned the item. Hopefully, this bill will give pawn brokers those rights.

Todd Coutts said he supported this bill and supplied written testimony from **Steve Briggs and Scott Fairfull, Missoula Pawnbrokers. EXHIBIT 1**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. DON LARSON questioned what steps are taken to insure merchandise is not stolen. **Mr. Ash** said they check with the police, they require an identification card, they are permitted to ask for a thumb print and may require a document of ownership.

CHAIRMAN SIMON asked whether, if an article was taken as evidence before the trial and the charges were dropped, the pawn broker is still out. Since there would be no sentencing court then the restitution would also be null and void. **REP. WELDON** said in those situations a contract action could be developed. **CHAIRMAN SIMON** said if the charges were not pressed and it does not go to court, then a restitution cannot be brought before a court, and the pawn broker is out again. **SEN. WELDON** said if this could be rectified, he would be amenable to it.

REP. CHARLES DEVANEY questioned the holding of an item for 30 days. **SEN. WELDON** said the 30-day holding requirement is under current law.

REP. LARSON said there seems to be some similarities between this law and the law of condemnation proceedings for mini-warehouse storage. **SEN. WELDON** said he did not know the answer. Perhaps, the law of search and seizure is the same.

REP. LARSON then said the laws are very straight forward regarding the disposition of abandoned property. **SEN. WELDON** said he would check with the legislative council.

REP. ALVIN ELLIS asked how guns were identified. **Mr. Ash** said they are identified by a serial number.

REP. JON ELLINGSON asked if it were expected that there would be some probable cause showing before the administrative officer and, if so, whether the bill could be left as it is without imposing that requirement or whether there should be some more detail. **SEN. WELDON** said current practice is that there must be probable cause showing.

REP. KARL OHS questioned the administrative warrant policy. **SEN. WELDON** said current law, after 1993, required the police officer to go to the pawn broker. If the officer saw a particular kind of gun which they had been notified had been stolen, the officer informs the pawn broker that the piece of property is stolen verbally. After thirty days of being held, he can then demand that particular piece of property and give the pawn broker a receipt. The only real exchange between the pawn broker and the officer is verbal information, demand of 30-day hold, and a receipt. The administrative warrant adds an additional step. Rather than verbally informing to acquire an administrative warrant, the pawn broker can then go to the court system and prove the ownership of the article. The court can then issue an order concerning the particular validity of the warrant.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 311

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, Lake County, said this bill is an act revising the Montana Small Business Licensing Coordination Act; establishing a plan for a business registration and licensing system; establishing a board of review and providing an effective date and a contingent voidness provision.

CHAIRMAN SIMON said it cost the merchant the same amount of money to go after someone who has written a $2 check or a $2000 check as far as the time involved and process. **SEN. VAN VALKENBURG** said this was essentially correct but the merchant would not be as inclined to pursue it as much.

Closing by Sponsor:

The sponsor closed.

TAPE 2, SIDE A

EXECUTIVE ACTION ON SB 246

Motion: **REP. ELLIS MOVED SB 246 BE CONCURRED IN.**

Discussion:

CHAIRMAN SIMON said the one saving grace the pawn brokers would have is that they can keep the merchandise in their possession and they can force redemption of the item. If the police get the item the charges are dropped. He said this may not be a cure-all.

REP. ELLIS said pressure could be placed on the person to confront the thief before the charges are dropped.

Vote: **Motion carried 18-0.**

EXECUTIVE ACTION ON SB 298

Motion/Vote: **REP. MCKEE MOVED SB 298 BE CONCURRED IN. Motion carried 18-0.**

EXECUTIVE ACTION ON SB 335

Discussion: **CHAIRMAN SIMON** said this bill was re-referred from the House floor.

Motion/Vote: **REP. MILLS MOVED TO RECONSIDER SB 335 FROM THE HOUSE FLOOR. Motion carried to re-refer 18-0.**

Motion/Vote: **REP. FORBES MOVED THE ELLIOTT AMENDMENT. Motion carried to adopt the Elliott amendment 18-0.**

Motion: **REP. FORBES MOVED THE KOTTEL AMENDMENT.**

Motion: **REP. MILLS MOVED TO STRIKE THE KOTTEL AMENDMENT.**

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL DATE 2-14-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 246** (third reading copy -- blue) **be concurred in.**

Signed: _____
Bruce Simon, Chair

Carried by: Rep. Ellis

Committee Vote:
Yes 18, No 0.

EXHIBIT 1
DATE 3-14-95
~~HB~~ SB246

TESTIMONY IN SUPPORT OF SB246 BY:
STEVE BRIGGS AND SCOTT FAIRFULL,
EMPLOYEES OF: MISSOULA PAWNBROKERS, MISSOULA, MT

THIS IS AN EXAMPLE THAT SHOWS THE NEED FOR MONTANA PAWNBROKERS TO GAIN DUE PROCESS IN THE CASES OF STOLEN PROPERTY TO WHICH PAWNBROKERS HAVE A POSSESSORY CLAIM.

IN 1994 WE LOANED MONEY TO A YOUNG MAN WHO USED AS COLLATERAL FOR THIS LOAN, THREE GUNS HE STOLE FROM HIS FATHER. THE PARENTS PRESSED CHARGES AND RESTITUTION FOR OUR LOAN CLAIM WAS DETERMINED BY THE COURTS. HE OWED US $450.00. AS OF THE DATE OF THIS COMMITTEE HEARING WE HAVE RECEIVED, $10.00. HE IS NOT IN JAIL AND HE IS NOW INJURED, CLAIMING DISABILITY AND CANNOT WORK.

WHEN WE ASKED HIS PAROLE OFFICER TO PRESS HIM FOR RESTITUTION SHE SAID, " DO YOU WANT BLOOD OUT OF A STONE?" "CALL ME BACK IN TWO AND A HALF YEARS." (3 YEARS IS THE STATUE OF LIMITATIONS ON RESTITUTION.)

NOW WE KNOW THAT SB246 IS NOT GOING TO SOLVE ALL OF OUR PROBLEMS WITH THIEVES. HOWEVER, IT IS A STEP TOWARD WORKING WITH THE LAW COMMUNITY, REGAINING RESTITUTION AND PUTTING CULPABILITY ON THE THIEF, NOT ON THE PAWNBROKER OR ON LAW ENFORCEMENT.

PERSONALLY, WE FEEL THAT WE UNCOVER CRIME AND RETURN GOODS TO THE TITLED OWNERS AND TECHNICALLY QUALIFY FOR RESTITUTION FROM THE FUND CALLED "CRIMESTOPPERS". THIS IS NOT AT ISSUE WITH SB246, BUT IT IS ONE OF THE WAYS THAT ALL OF US, INCLUDING THE MONTANA LEGISLATURE, CAN WORK TOGETHER TO COME UP WITH IDEAS FOR SOLVING PROBLEMS ASSOCIATED WITH THEFT CRIMES.

THANK YOU FOR YOUR TIME AND YOUR SUPPORT.

STEVE BRIGGS

SCOTT FAIRFULL

THE PURPOSE OF THE SPECIFIC CHANGES TO THE MONTANA CODE WITH SB246 IS TO GIVE BACK TO THE PAWNBROKER ACCESS TO THE COURTS AND DUE PROCESS WHEN STOLEN PROPERTY IS DISCOVERED IN OUR SHOPS. THE LAW AS IT STANDS NOW DENIES DUE PROCESS TO PAWNBROKERS ONLY. IT DISCRIMINATES AGAINST PAWNBROKER CASH LOAN BUSINESSESS AND DOES NOT AGAINST OTHER LENDING INSTITUTIONS. IN OTHER WORDS, THE LAW, AS CHANGED IN THE LAST LEGISLATIVE SESSION, SAYS, ALL PAWNBROKERS ARE FENCES FOR STOLEN PROPERTY AND THAT ALL CUSTOMERS WHO USE PAWNSHOPS ARE CROOKS.

THIS, SIMPLY STATED, IS A FALLACY.

PAWNSHOPS ALREADY PARTICIPATE IN A SYSTEM DESIGNED TO FILTER THE STOLEN GOODS WE DO GET. ACCORDING TO THE NATIONAL PAWNBROKERS ASSOCIATION, THIS IS LESS THAN 1% OF OUR TOTAL BUSINESS. THE SYSTEM WE USE REQUIRES US TO IDENTIFY EVERY PERSON WHO PAWNS OR SELLS AN ITEM TO US AND WE HAVE TO REPORT TO THE LOCAL SHERIFF'S AND POLICE DETECTIVES WHO THESE PEOPLE ARE AND WHAT ITEMS THEY BROUGHT IN. WE ARE THE ONLY CASH LOAN INSTITUTES IN THE WORLD WHO HAVE TO DO THIS. IMAGINE ASKING YOUR LOCAL BANK FOR A LOAN AND HAVE THEM REPORT YOUR COLLATERAL TO THE POLICE THE VERY PERSONAL INFORMATION YOU GIVE IN CONFIDENCE.

WHAT PAWNSHOPS DO IS PROVIDE CASH FOR COLLATERAL TO PEOPLE WHO DO NOT HAVE CREDIT OR ACCESS TO OTHER CASH, PEOPLE WHO ARE UNDEREMPLOYED AND PEOPLE WHO ARE JUST LOOKING FOR EXTRA CASH; FOR A VACATION, TO TIDE THEMSELVES OVER BEFORE SCHOOL LOANS COME IN, TO INVEST IN A USED CAR, ETC. THEY MUST PROVIDE ACCURATE INFORMATION ABOUT OWNERSHIP OF THE COLLATERAL THEY BRING IN.

IF A THIEF DECIDES TO USE THE PAWNSHOP TO PASS OFF STOLEN GOODS, THE SYSTEM KICKS INTO GEAR AND THE PEACE OFFICERS ARRIVE. AS THE LAW STANDS NOW, THE ITEM CAN BE SEIZED AND RETURNED TO THE TITLED OWNER WITHOUT DUE PROCESS FOR THE PAWNBROKER WHO HAS A POSSESSORY CLAIM AGAINST THE ITEM. WE ARE ASKING FOR ACCESS TO THE COURTS THROUGH AN ADMINISTRATIVE WARRANT AND WE ARE ASKING FOR RESTITUTION FOR OUR INVESTMENT FROM THE THIEF.

SUBJECT: SENATE BILL 246 TO AMEND CURRENT MONTANA CODE HB241,
CURRENT 46-5-212.
CODE SEARCH AND SEIZURE. PART 2. SEARCH WARRANTS.
PAWNBROKER TO SURRENDER STOLEN PROPERTY. When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to or purchased by the pawnbroker or dealer is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days unless demanded by a peace officer and, upon demand, shall surrender the property to the peace officer. the peace officer shall give the pawnbroker or dealer a receipt for any property surrendered by the pawnbroker or dealer.

THE 9TH AND 10TH CIRCUIT COURTS HAVE RULED IN FAVOR OF THE PAWN INDUSTRY SAYING THAT TO SEIZE PROPERTY FOR THE SOLE PURPOSE TO

RETURN THE PROPERTY TO THE ORIGINAL VICITIM DENIES DUE PROCESS OF LAW TO THE PAWNBROKER. THE PAWNBROKER ALSO HAS A CLAIM AGAINST THE PROPERTY. TITLE OF OWNERSHIP CANNOT BE TRANSFERRED THROUGH A THEFT BUT THE PAWNBROKER HAS A POSSESSORY CLAIM AGAINST THE PROPERTY.

ARTICLE II. SECTION 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

UNFAIR SEIZURE WITH INTENT TO DENY PAWNBROKERS OWNERSHIP OF PROPERTY IS UNCONSTITUTIONAL.

MONTANA CONSTITUTION IS MORE PROTECTIVE THAN FEDERAL. THE CURRENT SEIZURE LAW ENACTED AGAINST THE PROPERTY INTERESTS OF THE PAWNBROKER GOES AGAINST THE INTENT OF THE MONTANA LAW.

PRAGMATICALLY IT IS UNFAIR.

ARTICLE II. SECTION 10. RIGHT OF PRIVACY. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

THE PAWN INDUSTRY RELIES ON THE HONESTY AND RESPONSIBILITY OF THE CUSTOMER. THE CURRENT LAW REFLECTS THE FRUSTRATION OF LOCAL LAW ENFORCEMENT THROUGHOUT THE STATE AND VIEWS THEFT AS THE SOLE CONCERN OF LAW ENFORCEMENT AND THE ORIGINAL VICTIM. IT DOES NOT CONSIDER THE PROPERTY CLAIM OF RESPECTABLE CASH LOAN BUSINESSES WHO INADVERTENTLY TAKE IN STOLEN PROPERTY AS COLLATERAL. THE PAWNBROKER BECOMES THE SECOND VICTIM THROUGH A FRAUDULENT TRANSACTION.

I have included a copy of the 9th Circuit Court case: G & G Jewelry vs. City of Oakland.

The Montana Pawnbrokers, with SB 246 want to establish good working relations with state law and law enforcement to place the blame for theft on the criminal and not on the small business community of cash loans.

THANK YOU FOR YOUR TIME.

SINCERELY,

Linda Helding

LINDA HELDING
111 WEST ALDER
MISSOULA, MT 59802
(406) 543-5896

SUMMARY

Civil Litigation and Procedure/Summary Judgment

The court of appeals reversed a summary judgment of the district court and remanded. The court held that when police asserted that the warrantless seizure of stolen property from a pawnbroker was for criminal investigation purposes, but the police forms used and the pawnbroker's affidavit indicated otherwise, a genuine issue of material fact was raised making summary judgment inappropriate.

Appellant G & G Jewelry, Inc., owned by appellant Robert Goldstone, received in pawn a camera from Frederick Brasley. Goldstone informed the Oakland Police Department of the transaction. The camera was reported as stolen by Michael Watson. Pursuant to statute, the police placed a hold on the property, requiring Goldstone to retain the camera. The police investigation concluded that the camera did appear to be Watson's, but that Brasley had not stolen it. Before the expiration of the hold period, appellee Jonathan Madarang of the Oakland Police Department presented to Goldstone a document authorizing release of the camera to Madarang for Watson. The police also furnished to Goldstone a notice of claim of ownership indicating that the camera would be turned over to Watson unless Goldstone showed cause to believe Watson was not the owner. Madarang seized the camera. Goldstone sued appellee City of Oakland. The district court granted summary judgment for the City, concluding as a matter of law that the seizure was investigative in purpose, and that it was justified under the plain view doctrine.

[1] The document authorizing release to Madarang for Watson indicated that the seizure was not for investigative purposes, but to return the camera to Watson. [2] The notice of claim of ownership reinforced that indication by stating that the camera would be turned over to Watson unless Goldstone

EXHIBIT 1
DATE 3-14-95
SB 246

gave reason to believe that Watson was not the owner. [3] The statute under which the hold was placed recognizes the legitimate possessory interest of the pawnbroker, and resolves only the right to possession until ownership is established by agreement, civil litigation, or is simply not contested. [4] The police had no authority to determine ownership or the right to possession pending such a resolution. [5] If the camera was taken for the purpose of delivering it to the alleged owner, the procedure was improper under the statute, and inconsistent with United States and California due process precepts. Because of the conflicting evidence, a genuine issue of material fact existed as to whether the police took the camera for a lawful purpose. Therefore, summary judgment was improper.

[6] The district court correctly held that plain view seizure of the camera for investigative purposes did not violate Fourth Amendment prohibitions. [7] Plain view seizure, however, did not authorize the police to seize the camera for the purpose of turning it over to Watson. [8] Under the California statute, police may seize from a pawnbroker property needed for a criminal investigation or trial by placing a hold on it, taking voluntary delivery from the pawnbroker, or seizing it and providing a receipt. [9] When the property is no longer needed for investigation or trial, the statute requires it to be returned to the pawnbroker.

COUNSEL

Henry O. Noffsinger, Pleasant Hill, California, for the plaintiffs-appellants.

Diane J. Simon, Assistant to the City Attorney, City of Oakland; Catherine M. Steane, Oakland, California, for the defendants-appellees.